

## PROPOSED REGULATIONS--GARMENT MANUFACTURING

### Title 8, California Code of Regulations Division 1, Chapter 6, Subchapter 8

#### **§13630. ~~Definition.~~ Registration of Manufacturers and Contractors**

~~As used in this article:~~

~~"Garment manufacturer" means any person, whether an individual, partnership, corporation, or association, including but not limited to, an employer, a manufacturer, a jobber, a wholesaler, a contractor, or a subcontractor, who sews, cuts, makes, processes, repairs, finishes, assembles, or otherwise prepares any garment or any article of wearing apparel, designed or intended to be worn by any individual, for sale or resale, with the exclusion of any person who is an employee, or who is a sole manufacturer, or who is solely engaged in cleaning, altering or tailoring.~~

All persons, within the meaning of Labor Code section 2671(a), engaged in "garment manufacturing," as defined in Labor Code section 2671(b), must register with the Labor Commissioner as either a "contractor"(defined at Labor Code section 2671(d)), or a "manufacturer," according to that person's bona fide business practices. A person's designation on a registration as a "contractor" or "manufacturer" shall not preclude the introduction of evidence in any proceeding before the Labor Commissioner on the actual business practices of such person.

NOTE: Authority Cited: Sections 2671(b), 2672, Labor Code. Reference: Sections 2671, 2675, Labor Code.

#### **§13631. Recordkeeping.**

~~Every employer within the meaning of Labor Code sections 2673 and 2677 engaged in the business of garment manufacturing shall keep accurate records as required by Labor Code sections 226 and 2673, any applicable order of the Industrial Welfare Commission, and section 13659 of these regulations. These records shall be maintained for a period of no less than four years at the place of employment or at a central location within the State of California, and shall be made available to the Labor Commissioner, or his or her agents, upon request for inspection and/or copying. Failure to provide these records to the Labor Commissioner immediately upon request, or providing records that have been falsified, shall constitute grounds for revocation of registration or denial of an application for registration.~~

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 226, 1185, 2672, 2673, 2675, ~~2677~~, Labor Code.

#### **§13632. Advisory Committee.**

The Labor Commissioner shall appoint a 15 member advisory committee on issues related to employment and the enforcement of wage and hour laws in the garment industry, which shall meet at least semi-annually, alternately in Los Angeles and San Francisco. Members shall serve without compensation or reimbursement for expenses. At each meeting the Committee may ~~shall~~ authorize distribution of a publication to be prepared by the ~~Concentrated Enforcement Program of the~~ Division of Labor Standards Enforcement, focusing ~~This publication shall focus~~ on industry practices and patterns of violations ~~and shall be distributed to all~~

~~registrants and other interested persons.~~

NOTE: Authority Cited: Section 2672, Labor Code. Reference: Section 2674.1, Labor Code.

### **§13633. Registration of Employee Leasing Companies and Temporary Agencies.**

(a) Every employee leasing company or temporary agency that leases or otherwise provides garment manufacturers or contractors with the services of employees engaged in sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or article or wearing apparel or accessories designed or intended to be worn by any individual is itself engaged in garment manufacturing, and ~~garment manufacturer~~ must register with, and obtain a valid registration certificate from a district office of the Labor Commissioner, as a contractor.

(b) Every employee leasing company or temporary agency shall provide the Labor Commissioner with immediate written notice whenever it enters into, or terminates, an arrangement to lease or otherwise provide employees engaged in any of the above enumerated garment manufacturing operations to a garment manufacturer or contractor. This notice shall include the name and address of the garment manufacturer or contractor that was or will be a party to the arrangement, the dates from beginning to end that employees were or will be leased or otherwise provided under the arrangement, the address(es) where the employees performed or will perform the garment manufacturing operations, and the number of employees that have been or will be leased or otherwise provided to the garment manufacturer or contractor under the arrangement. This notice shall be mailed to: Division of Labor Standards Enforcement, Licensing & Registration Unit, PO Box 420603, San Francisco, CA 94142. Failure to provide this notice will constitute grounds for revocation of registration or denial of an application for registration.

NOTE: Authority Cited: Sections 2671(b), 2672, Labor Code. Reference: Sections 2671, 2675, Labor Code.

### **§13634. Requirements for Registration.**

(a) Applicants for registration shall provide the following information, which shall be certified under penalty of perjury:

~~(a)~~(1) Name and business address of applicant, and the address of each location where employees will be engaged in garment manufacturing;

~~(b)~~(2) Form of business entity;

~~(c)~~(3) Name and residence address of owner, if sole proprietorship;

~~(d)~~(4) Name(s) and residence address(es) of co-owners, if any;

~~(e)~~(5) Fictitious name, if any, under which the business is operated;

~~(f)~~(6) Names and residence addresses of all partners, if a partnership;

~~(g)~~(7) Names and residence addresses of all officers and directors, and their respective titles, if a corporation;

~~(h)~~(8) Number of employees, and a copy of the most recently filed quarterly report to the Employment

Development Department reflecting the number of employees employed;

~~(9)~~ Trade specialties Type of business, and whether the business primarily operates as a garment manufacturer or a garment contractor;

~~(10)~~ Proof of current workers' compensation insurance coverage;

~~(11)~~ The name(s), address(es), and forms of business entities of persons and entities engaged in the business of garment manufacturing with whom the applicant ~~contracts~~ has entered into contracts for the performance of garment manufacturing services during the past three years;

(12) The applicant's employer tax identification number;

(13) Name(s) and residence address(es) of all managers and supervisors who directly or indirectly control the wages, hours, or working conditions of the applicant's employees.

(14) Name(s) and residence addresses of all substantial shareholders, and the percentage of their ownership in the business, if a corporation. For the purpose of this section, the term "substantial shareholder" shall mean any shareholder who owns at least 20% of the total value of all classes of stock, or, if no stock has been issued, who owns at least 20% of the beneficial interests in the corporation.

(15) Names and residence addresses of all members, if a limited liability corporation.

(16) Name and business address of the agent for service of process, if a corporation or limited liability company.

(17) The amount of gross sales receipts, as defined in section 13635(c), for the 12 month period immediately preceding the filing of the application.

(18) A list of all assessments of wages due and all penalty citations for violations of provisions of the Fair Labor Standards Act or the California Labor Code that were issued by the United States Department of Labor or the California Department of Industrial Relations within the past three years to the applicant or the applicant's owner(s), partners (if the applicant is a partnership), corporate officers, directors and substantial shareholders (if the applicant is a corporation), members (if the applicant is a limited liability company), managers and supervisors; the names of the persons and businesses that were cited or assessed; the date and amount of each citation or assessment; the disposition of any appeal on the citation or assessment; and whether or not the citation or assessment has been paid, and if so, the date it was paid.

(19) A list of all judgments and settlement agreements for unpaid wages that were entered within the past five years against the applicant or the applicant's owner(s), partners (if the applicant is a partnership), corporate officers, directors and substantial shareholders (if the applicant is a corporation), members (if the applicant is a limited liability company), managers and supervisors; the names of the persons and businesses against whom judgments or settlement agreements for unpaid wages were entered; the date of entry of judgment or the date of execution of the settlement agreement; the court that entered the judgment, the case number, and the amount found due in each judgment or settlement agreement; and whether or not the judgment or settlement agreement has been paid, and if so, the date it was paid.

(20) Whether the applicant or the applicant's owner(s), partners (if the applicant is a partnership), corporate officers, directors and substantial shareholders (if the applicant is a corporation), members (if the applicant is

a limited liability company), managers and supervisors have had a garment registration certificate revoked or an application for registration denied, and if so, the name and address of the business whose registration or application for registration was revoked or denied, the period of revocation or date of denial, and the reasons for the revocation or denial.

(21) For any applicant that had an application for registration denied, or a registration revoked or suspended, pursuant to proceedings under section 13646 at any time during the past three years, whether the applicant has had any gross sales receipts, as defined in section 13635(c), at any time during the three years prior to the filing of the application.

(22) For new applicants, whether the applicant or the applicant's owner(s), partners (if the applicant is a partnership), corporate officers, directors and substantial shareholders (if the applicant is a corporation), members (if the applicant is a limited liability company), managers and supervisors, or immediate family members of any of the above persons have ever previously operated as a garment manufacturer, contractor, or in any other capacity in garment manufacturing, including but not limited to exercising direct or indirect control over garment workers' wages, hours and working conditions, and if so, the name(s) and address(es) of the business(es), dates of operation, garment registration number(s), and dates of registration.

(b) Every person applying for registration as a manufacturer shall certify in writing that he or she is aware of the wage guarantee provision of Labor Code section 2673.1, under which every garment manufacturer guarantees payment of his or her proportionate share of any unpaid minimum wages and overtime wages owing to any employees of the contractors with whom the manufacturer contracts, for work performed by the contractor's employees on behalf of the manufacturer.

NOTE: Authority cited: Sections 2672 and 2675, Labor Code. Reference: Sections 2673.1, 2675, 2678, 2684, Labor Code.

### **§13635. Registration and Examination Fees.**

~~The initial registration fee shall be set at one hundred dollars (\$100.00). The annual renewal fee shall be set at seventy five dollars (\$75.00), and shall be on the same terms and conditions as the initial registration.~~

(a) The Labor Commissioner shall collect the following amounts in fees for initial registration and annual renewal of registration from contractors who have not had an application for registration denied or a registration revoked or suspended pursuant to proceedings under section 13646 during any portion of the three year period prior to the submission of the application for registration:

(1) A \$250 fee for contractors with gross sales receipts of \$100,000 or less during the 12 month period prior to application.

(2) A \$350 fee for contractors with gross sales receipts of \$100,001 to \$500,000 during the 12 month period prior to application.

(3) A \$500 fee for contractors with gross sales receipts of \$500,001 to \$1,000,000 during the 12 month period prior to application.

(4) A \$1,000 fee for contractors with gross sales receipts in excess of \$1,000,001 during the 12 month period prior to application.

(b) The Labor Commissioner shall collect the following amounts in fees for initial registration and annual renewal of registration from manufacturers who have not had an application for registration denied or a registration revoked or suspended pursuant to proceedings under section 13646 during any portion of the three year period prior to the submission of the application for registration:

(1) A \$750 fee for manufacturers with gross sales receipts of \$500,000 or less during the 12 month period prior to application.

(2) A \$1,000 fee for manufacturers with gross sales receipts of \$500,001 to \$3,000,000 during the 12 month period prior to application.

(3) A \$1,500 fee for manufacturers with gross sales receipts of \$3,000,001 to \$7,000,000 during the 12 month period prior to application.

(4) A \$2,500 fee for manufacturers with gross sales receipts in excess of \$7,000,001 during the 12 month period prior to application.

(c) The Labor Commissioner shall collect the following amounts in fees for initial registration and annual renewal of registration from any manufacturer or contractor who has had an application for registration denied or a registration revoked or suspended, pursuant to proceedings under section 13646, at any time during the three year period prior to the submission of the application for registration:

(1) A \$500 fee for contractors with no gross sales receipts during the three year period prior to application.

(2) A \$1,000 fee contractors with any gross sales receipts during the three year period prior to application.

(3) A \$1,500 fee for manufacturers with no gross sales receipts during the three year period prior to application.

(4) A \$2,500 fee for manufacturers with any gross sales receipts during the three year period prior to application.

(d) For the purpose of this section, gross sales receipts means all amounts received by the applicant, in the form of money, promissory notes, credit, or any other items of value, for the sale or transfer of goods, or for services provided by the applicant or its employees. In determining gross sales receipts, the applicant shall not deduct from sales receipts or adjust sales receipts for any expenses, including but not limited to the cost of material, labor, services, storage, transportation, rent, utilities, interest on loans, insurance, taxes, and any business losses.

(e) An applicant or registrant shall, within a reasonable time and in no event more than 15 days from the date of a request, provide the Labor Commissioner any documents deemed necessary by the Labor Commissioner for verifying gross receipts. Failure to provide the requested documentation or providing any false and misleading information concerning gross receipts shall constitute grounds for denial of the application or revocation of registration.

(f) Every applicant required to take the examination(s) provided by Labor Code section 2675(c) or (f) shall pay an examination fee of \$50 to the Labor Commissioner prior to taking the examination(s). An individual will not be permitted to take the examination(s) on behalf of an applicant unless the individual has at least a

20% ownership interest in the applicant's business, or will function as the applicant's director of labor relations, and in that capacity will exercise direct or indirect control over employees' wages, hours and working conditions.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2675, 2675.5, Labor Code.

### **§13635.1. Filing Schedule for Applications.**

(a) Within 30 calendar days of receiving an application, the Labor Commissioner shall inform the applicant in writing that either: (1) the application is complete and has been accepted for processing, or (2) the application is incomplete, and specify the information or items needed to correct the deficiency.

(b) Within 60 days from the date on the written notice of an incomplete application, the applicant must correct the application by providing the required information or items, and return the application to the Labor Commissioner. If the applicant fails to meet this deadline, the application will be rejected, and the applicant shall forfeit the application fee. Following a rejection pursuant to this subdivision, the applicant may submit a subsequent application which must be accompanied by the required fee.

(c) Within 60 calendar days after accepting a completed application, the Labor Commissioner shall inform the applicant in writing of the decision on the application.

(d) In the event that the Labor Commissioner fails to reach an application decision within 60 days of accepting a completed application, the applicant may appeal to the Labor Commissioner in accordance with the following procedure:

(1) The appeal shall be in writing and shall be delivered in person or postmarked within 15 calendar days after the maximum time period specified in subdivision © has elapsed.

(2) After receiving the appeal, the Labor Commissioner shall determine whether or not the maximum time period of subdivision © was exceeded, and if so, whether there was good cause for the failure to comply. Good cause as set forth in this section means, in accordance with Government Code section 15376, that either (A) the Labor Commissioner processed 15% more applications than in the same calendar quarter of the proceeding year, or; (B) the Labor Commissioner was required to rely on another public or private entity to process any part of the application, and that other entity was responsible for the delay, or; © the delay was caused by a natural disaster or other catastrophe that substantially impeded the Labor Commissioner's ability to process the application in a timely manner.

(3) If the Labor Commissioner finds no good cause for the failure to reach a decision on the completed application within the time set forth in subdivision (c), the Labor Commissioner shall refund any applicable filing fee in full, and shall ensure that the application is expeditiously processed without any additional fee.

(4) If the Labor Commissioner finds good cause for the failure to reach a decision on the completed application within the time set forth in subdivision (c), the Labor Commissioner shall not refund the applicable filing fee or any portion thereof.

(5) A finding of untimely processing by the Labor Commissioner shall have no bearing on the merits of the application or the decision on whether to issue a Registration Certificate. Any such application shall be subject to denial under the criteria set out at Labor Code section 2675, and in accordance with the procedures set out under section 13646, below.



(e) The following information is provided pursuant to Government Code section 15376: During the past two years, the Labor Commissioner's time periods for processing an application for registration from receipt of the application to the final issuance or denial of registration were as follows:

(1) The median time was 45 calendar days.

(2) The minimum time was 7 calendar days.

(3) The maximum time was 365 calendar days.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Section 2675, Labor Code ; Sections 15374, 15375, 15376, 15377, 15378, Government Code.

### **§13636. Registration Certificate.**

The Registration Certificate shall be valid for a period of one year from the date of issuance, unless revoked. The Certificate is non-transferrable and is valid only for the address(es) shown on its face.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Section 2675, Labor Code.

### **§13637. Amended Certificate.**

~~The registered garment manufacturer~~ registrant shall notify the Labor Commissioner in writing ~~immediately~~ of at least two weeks prior to any change(s) of address. Such notification is required as to each location not already listed on the Registration Certificate where employees will be engaged in garment manufacturing. ~~On~~ Following receipt of written notice from a garment contractor or manufacturer in possession of a current Registration Certificate, the Labor Commissioner shall, without additional cost, issue an amended certificate listing the new address(es), unless the business of garment manufacturing cannot legally or safely be carried on at the proposed address(es).

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2651, 2675, Labor Code.

### **§13638. Duplicate Certificate.**

If the original certificate is lost, the Labor Commissioner shall, on written request and without additional cost, issue a duplicate certificate.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Section 2675, Labor Code.

### **§13639. Penalty Assessment.**

Penalties assessed under Labor Code Section 2678(a) shall be computed by using any of the following:

(a) The number of affected employees present at the time of the inspection;

(b) The number of affected employees present when the violations occurred, as determined from the employer's records;

(c) The number of affected employees present when the violations occurred, as established from other information available to the Division of Labor Standards Enforcement.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Section 2678, Labor Code.

#### **§13640. Notice of Penalty Assessment and Right to Hearing.**

If penalties are assessed under Labor Code Section 2678(a), the Division of Labor Standards Enforcement shall serve written notice as required by Labor Code Section 2678(b) on all persons liable as well as those who may assume liability for the violations. Notice shall include information on hearing and appeal rights under Labor Code Section 2681.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2677, 2678, and 2681, Labor Code.

#### **§13641. Bonds for Continued Registration.**

(a) The amount of the registration bond to be deposited with the Labor Commissioner under the provisions of Labor Code Sections 2675(a)(3), 2679(a) and 2679(b) shall be sufficient to insure payment of wages and benefits to all employees up to a maximum of four calendar weeks. In no event shall the number of employees used for such computations be less than the highest number of employees ~~of record~~ employed during any one pay period during the preceding 12-month period. The registration bond shall be issued by a surety licensed to do business in the State of California.

(b) An undertaking, in the form of a cashier's check or money order made payable to the Labor Commissioner, may be provided to the Labor Commissioner in lieu of depositing a surety bond as a condition for continued registration under Labor Code sections 2675(a)(3), 2679(a) and 2679(b). The Labor Commissioner shall deposit the undertaking in a bank account in which the Labor Commissioner is named as a trustee. Any earned interest, along with the principal, shall be used to satisfy claims against the undertaking. Upon return of the undertaking, any remaining amount, including interest, shall be transmitted to the employer.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2675, 2679, Labor Code.

#### **§13642. Return of Registration Bond.**

~~If a bonded~~ an employer that has posted a bond or undertaking pursuant to section 13641 of these rules does not commit additional violations as set forth in Labor Code Sections 2673, 2675 and 2678 within any ~~two~~ three year period, the bond or undertaking shall be returned to the employer.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2673, 2675(a), 2678, 2679, Labor Code.

#### **§13643. ~~Termination of~~ Action Against Registration Bond.**

~~If a bonded~~ an employer that has posted a bond or undertaking pursuant to section 13641 of these rules ~~is unable~~ fails to pay wages and benefits to employees, as set forth in Labor Code section 2675, the Labor Commissioner may terminate proceed against the bond or undertaking by written notice to the employer and the surety; and shall take appropriate action ~~against the bond~~ to recover the unpaid wages and benefits from



the bond or undertaking.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2675, 2679, Labor Code.

**§13644. ~~Alternate Forms of Security.~~ Bonds for Filing an Appeal from an Order, Decision or Award.**

~~If cash or other negotiable instrument is received in lieu of a surety bond, it shall be deposited in a savings account in a bank authorized to do business in the State, naming the Labor Commissioner as trustee. Any interest shall be credited to the employer.~~

(a) The bond that is required, pursuant to Labor Code section 2673.1(g), as a condition precedent to filing an appeal from an order, decision or award of the Labor Commissioner, shall be issued by a surety licensed to do business in the State of California, in an amount equal to one and one-half times the award, and shall be made payable to and posted with the Labor Commissioner. An undertaking, in the form of a cashier's check or money order made payable to the Labor Commissioner may be provided to the Labor Commissioner in lieu of posting this surety bond. The surety bond or undertaking shall be delivered to the office of the Labor Commissioner where the hearing that resulted in the order, decision or award was held. The bond or undertaking shall be conditioned that if any judgment is entered in favor of the employee, the contractor or guarantor shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the contractor or guarantor shall pay the amount owed pursuant to the order, decision or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the contractor or guarantor shall pay the amount that it is obligated to pay under the terms of the settlement agreement. If the contractor or guarantor fails to pay the amount owed within 10 days of the entry of judgment, dismissal or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the bond or undertaking equal to the amount owed, or the entire bond or undertaking if the amount owed exceeds the bond or undertaking, shall be forfeited to the employee.

(b) Upon receipt of this appeal bond or undertaking, the Labor Commissioner shall provide the contractor or guarantor posting the bond or undertaking with a Notice of Posting of Bond With the Labor Commissioner Pursuant to Labor Code section 2673.1, stating the name and case number of the order, decision or award, the amount posted with the Labor Commissioner, the date this amount was posted, and that no additional appeal bond need be posted with the court because this case involves minimum wages or overtime compensation owed to garment workers, and thus, the appeal bond provisions of Labor Code section 2673.1 (g), rather than the appeal bond provisions of Labor Code section 98.2(b), apply to the filing of a de novo appeal from the Labor Commissioner's order, decision or award. The contractor or guarantor filing an appeal from the order, decision or award shall advise the court with which it is filing this appeal that it has posted the required bond with the Labor Commissioner by attaching to its notice of appeal a copy of the Notice of Posting of Bond With the Labor Commissioner.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 98.2(b), 2673.1 ~~2675, 2679~~, Labor Code.

**§13645. Periods of Revocation.**

(a) Revocation periods under Labor Code Section 2679(b) shall be ~~(a)~~ 30-90 days if one of the violations relates to minimum wage, overtime, or child labor; ~~(b)~~ 3-6 months if two of the violations relate to minimum wage, overtime or child labor; and ~~(c)~~ 6 months-1 year if three or more of the violations relate to minimum wage, overtime or child labor.

(b) A garment manufacturer or contractor whose registration is revoked under this section may apply for a new registration upon expiration of the revocation. An application for new registration will be denied unless all judgments and settlement agreements for the payment of wages have been satisfied.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Section 2675(a)(2), 2679(b), Labor Code.

**§13646. Hearings to Deny an Application and to Revoke or Suspend Registration.**

(a) Denial of an application for registration and revocation or suspension of registration shall be upon proper notice and upon hearing, if appealed. The appeal shall be directed to the Labor Commissioner who shall assign the matter to a hearing officer for hearing. The hearing shall be conducted ~~in the same manner and~~ according to the ~~same~~ rules set forth ~~in Section 11035 of these regulations~~ below, and except as specifically provided herein, the provisions of Title 2, Division 3, Part 1, Chapter 5 of the Government Code (commencing with Government Code section 11500) shall not apply to these proceedings.

(b) Proceedings to determine whether a registration shall be revoked, suspended or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which set forth in ordinary and concise language the acts or omissions with which the registrant is charged, and shall specify the statutes or rules which the registrant is alleged to have violated. The accusation shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the Division of Labor Standards Enforcement

(c) Proceedings to determine whether a registration certificate shall be issued or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the applicant must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party that would authorize a denial of the application for registration. The statement of issues shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the Division of Labor Standards Enforcement.

(d) Upon the filing of an accusation or statement of issues, the Division of Labor Standards Enforcement shall serve a copy thereof on the registrant or applicant in a manner provided by Government Code Section 11505(c). The copy of the accusation or statement of issues shall include or be accompanied by (1) a statement that the respondent may request a hearing by filing a notice of defense within 15 days after service upon the respondent of the accusation or statement of issues, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (2) a form entitled notice of defense which, when signed by or on behalf of the respondent and returned to the Division, will constitute a request for a hearing.

(e) Within 15 days after service of the accusation or statement of issues, the respondent may file with the Division a notice of defense in which the respondent may (1) request a hearing; (2) object to the accusation or statement of issues on the ground that it does not state acts or omissions upon which the Division may proceed; (3) object to the form of the accusation or statement of issues on the ground that it is so indefinite or uncertain that the respondent cannot prepare a defense; (4) admit the accusation or statement of issues in whole or in part; (5) or present new matter by way of a defense. The respondent shall be entitled to a hearing on the merits if the respondent files a timely notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation or statement of issues not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the Division, in its discretion, may nevertheless grant a hearing.

(f) If the respondent either fails to file a notice of defense or to appear at the hearing, the Division may take

action based upon the respondent's express admissions or upon other evidence and declarations may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the issuance or renewal of a registration, the Division may proceed by default without scheduling a hearing or taking evidence.

(g) Declarations may be admitted into evidence at a contested hearing in accordance with the procedure for admitting affidavits set forth at Government Code Section 11514.

(h) At any time before the matter is submitted for decision the Division may file or permit the filing of an amended or supplemental accusation or statement of issues. If the amended or supplemental accusation or statement of issues presents new charges, the Division shall afford the respondent a reasonable opportunity to prepare a defense thereto. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation or statement of issues may be made orally during the hearing.

(i) The provisions of Government Code Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding to deny an application for registration or to revoke or suspend a registration. A party shall have 20 days from the date of the mailing of the request for discovery to provide the requested discovery to the requesting party. Any party claiming non-compliance with a discovery request made under this section may file with the hearing officer a motion to compel discovery. Any such motion shall be served upon the party from whom discovery is sought within 15 days of that party's failure or refusal to provide the discovery. The party against whom discovery is sought may file a written response to the motion by filing such response within 10 days of service of the motion. The motion may be decided with or without a hearing, at the discretion of the hearing officer. The order denying the motion, or granting the motion in whole or in part, shall be in writing.

(j) The Division shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The notice of hearing shall be in substantially the same form as set forth at Government Code Section 11509, and shall include notice of the right to request an interpreter for a party or witness who cannot proficiently speak or understand English.

(k) The hearing shall be presided over by a hearing officer appointed by the Labor Commissioner. A contested hearing shall be conducted in accordance with the procedures set forth at sections 13651 to 13654 of these regulations.

(l) The hearing officer's proposed decision shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision, as provided in Government Code Section 11425.50. Within 45 days of the conclusion of the hearing, the hearing officer shall transmit the proposed decision to the Labor Commissioner, who may either (1) adopt the proposed decision in its entirety, or (2) modify any part of the proposed decision, including the order, or (3) remand the case to the hearing officer for further proceedings. Within 60 days of the conclusion of the hearing, copies of the Labor Commissioner's decision, and the hearing officer's proposed decision which shall be attached thereto, shall be delivered to the parties personally or sent to them by certified mail. The decision shall become effective 30 days after it is delivered or mailed to the respondent, unless the decision provides for an earlier date, or a stay of execution has been granted by the Division. A stay of execution may be included in the decision or granted by the Division at any time before the decision becomes effective, and may be accompanied by an express condition that the respondent comply with specified conditions or terms of probation.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2673.1(m), 2675(a)(2), 2679(b), Labor Code.

### **§13647. Registration After Revocation.**

After the revocation period expires, and liabilities set forth in Labor Code Sections 2673.1, 2677, 2678, and 2679(b) have been satisfied, the garment manufacturer or contractor may file a new application for registration with the ~~District Office of the~~ Labor Commissioner.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2673.1, 2675, 2677, 2678, 2679(b), Labor Code.

### **§13648. Confiscation.**

(a) If garments are confiscated pursuant to Labor Code Section 2679(b) or 2680(a), notice of confiscation and hearing and appeal rights, as provided by Labor Code Section 2681, shall be served on all persons liable or who may assume liability for violations.

(b) If the contractor's means of production, including manufacturing equipment or property, are confiscated pursuant to Labor Code Section 2680(b), notice of confiscation and hearing and appeal rights shall be served on the contractor and on any other person or entity known to have an ownership interest in the equipment or property. Hearing and appeal rights shall be according to the same provisions for the appeal and hearing of garment confiscations, as set forth in Labor Code Section 2681, and section 13650 of these regulations.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2679, 2680, 2681, Labor Code.

### **§13649. Disposition of Confiscated Goods.**

(a) ~~Confiscated~~ Garments or wearing apparel confiscated pursuant to Labor Code Section 2658.7, 2664, 2679(b), or 2680(a), and not otherwise returned, may shall be disposed of as follows:

(1) The confiscated goods may be released to nonprofit organizations whose articles of association or incorporation include religious, charitable, social, and educational purposes, provided that the organization agree, in writing, that these goods will be made available at no cost to impoverished or needy persons, that these goods will not be offered for sale to any person, and that these goods will not be given to any for-profit business; or

(2) The confiscated goods may be released to public agencies, including, but not limited to, State agencies, political subdivisions, municipal corporations, or school districts, which conduct power machine sewing classes, for instructional use in such classes; or

(3) The confiscated goods may be destroyed by shredding, by burning, or by otherwise rendering them useless as items of wearing apparel.

(b) Confiscated manufacturing equipment or property (other than garments or wearing apparel) may be disposed of by destruction, donation to a non-profit charitable organization or educational institution, or by sale to any purchaser. If such equipment or property is sold by the Labor Commissioner, the proceeds of the sale shall be deposited as provided by Labor Code Section 2680(c).

NOTE: Authority cited: Sections 2666, 2672, Labor Code. Reference: Sections 2658.7, 2664, 2679, 2680, 2681, Labor Code.

**§13650. Hearings on Appeals of Penalty Assessments or Confiscations; ~~Decision; and Service of the Decision.~~**

A hearing held pursuant to Labor Code section 2681 on an appeal of a garment penalty assessment or a confiscation of garments, wearing apparel or other property shall be conducted in accordance with the procedures set forth at sections 13651 to 13654 of these regulations.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2678, 2680, 2681, Labor Code.

**§13651. Conduct of Hearing; Rules of Evidence.**

(a) ~~Any~~ The hearing on a petition or appeal need not be conducted according to the technical rules of evidence relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, except that the rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(b) Hearsay evidence may be used to supplement or explain other evidence, but shall not of itself be sufficient to support a finding. An objection is timely if made before submission of the case.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2673.1(m), 2675(a)(2), 2679(b), 2681, Labor Code.

**§13652. Rights of Parties at Hearing; Taking of Evidence; and Rules of Procedure.**

(a) Each party to a hearing shall have the right to appear in person and by counsel; to call and examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; to rebut the evidence against him; and to introduce documentary exhibits and other evidence.

(b) Oral evidence shall be taken only on oath or affirmation.

(c) The hearing proceedings shall be electronically recorded. In lieu of or supplemental to an electronic recording, the hearing officer shall allow a party to have the proceedings transcribed by a court reporter, provided that the court reporter furnish the Labor Commissioner with a certified copy of the transcript as soon as it is prepared, and that the party requesting that the proceedings be transcribed pay the cost of all transcripts.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2673.1(m), 2675(a)(2), 2679(b), 2681, Labor Code.

**§13653. Role of the Hearing Officer.**

The hearing officer who presides over the hearing, in exercising sound discretion, may control the order of presentation of evidence at the hearing; keep out repetitive and cumulative evidence; and otherwise rule on the evidence.



NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2673.1(m), 2675(a)(2), 2679(b), 2681, Labor Code.

#### **§13654. Issuance of Subpoenas.**

~~Prior to a hearing, upon the application of any party to the proceedings, the hearing officer may issue subpoenas to compel the attendance of necessary witnesses and the production of books, papers, documents, and things. In the exercise of sound discretion, the hearing officer may limit the number of witnesses subpoenaed either for the purpose of corroborating or establishing a single material fact in issue, or where the party requesting the subpoena has not furnished satisfactory evidence that the witness will be able to give necessary and competent testimony, material to the issues, at the hearing.~~

Subpoenas and subpoenas duces tecum may be issued for the attendance of witnesses at the hearing, and for the production of documents at any reasonable place and time or at a hearing, in accordance with the procedures set forth at Government Code Sections 11450.05 to 11450.50.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 2673.1(m), 2675(a)(2), 2679(b), 2681, Labor Code.

#### **§13655. Determination of Guarantor's Proportionate Share of Liability.**

The Labor Commissioner may determine the proportionate share of liability of a wage guarantor under Labor Code section 2673.1 by using any one of the following methods, at the discretion of the Labor Commissioner. Records maintained by the contractor and guarantor(s) may be used to establish proportionate share, but in the event that any necessary records are not produced, incomplete, or inaccurate, the Labor Commissioner may rely on any other available evidence, including the testimony of claimants, with respect to these issues:

(a) Contractor's Gross Sales - The amount earned by the contractor as a result of work performed by the contractor's employees on behalf of the wage guarantor during a pay period as a percentage of the total amount earned by the contractor as a result of work performed by its employees during that pay period.

(b) Employees' Hours Worked - The amount of time that the contractor's employees spent performing work on behalf of the wage guarantor during a pay period as a percentage of the total hours worked by the contractor's employees during that pay period.

(c) Garments Produced - The number of garments or articles of wearing apparel finished, assembled, produced or otherwise prepared by the contractor's employees on behalf of the wage guarantor during a pay period as a percentage of the total number of garments or articles or wearing apparel finished, assembled, produced or otherwise prepared by the contractor's employees during that pay period.

(d) Presumption in the Absence of Records - In the absence of records, the Labor Commissioner will make just and reasonable inferences about a guarantor's proportionate share based on the competent testimony of the claimant(s). If such testimony is insufficient to allow the Labor Commissioner to determine proportionality based on subsections (a) (b) or (c), above, the full amount of the claim for unpaid minimum wages and overtime will be apportioned equally amongst the known guarantors.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Section 2673.1(b), Labor Code



### **§13656. Amounts Included in Assessment of Wages Owed and Order, Decision or Award.**

The Labor Commissioner's assessment of wages owed issued pursuant to Labor Code section 2673.1, and any subsequently issued order, decision or award, shall set out the amounts owed by the contractor and wage guarantor(s) as follows:

(a) The amounts owed by the contractor for (1) unpaid minimum wages, (2) unpaid overtime wages, (3) other unpaid wages, (4) other compensation owed, including unreimbursed business expenses, pursuant to the Labor Code or applicable Industrial Welfare Commission order, (5) liquidated damages in an amount equal to the unpaid minimum wages, (6) liquidated damages in an amount equal to the unpaid overtime wages, (7) interest on all unpaid wages and on the liquidated damages from the date such wages became due, pursuant to Labor Code section 98.1(c), (8) penalties pursuant to Labor Code section 203, and (9) any other penalties or damages arising under the Labor Code or applicable Industrial Welfare Commission order.

(b) The amounts owed by each wage guarantor for the guarantor's proportionate share of liability for (1) unpaid minimum wages, (2) unpaid overtime wages, (3) interest on all unpaid minimum wages and overtime wages from the date such wages became due, pursuant to Labor Code section 98.1(c), and (4) if it is found that the guarantor acted in bad faith within the meaning of Labor Code section 2673.1(e), liquidated damages in an amount equal to the unpaid minimum wages and overtime wages, plus interest thereon.

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 98, 98.1(c), 203, 226.7, 1194.2, 1195.5, 2673.1(e), 2802, Labor Code.

### **§13657. Attorney's Fees and Costs.**

(a) For the purpose of Labor Code section 2673.1(f), the failure by the contractor or guarantor to pay the full amount of the assessment at the meet- and-confer conference shall be deemed to constitute a refusal to pay the full amount of the assessment, and the employee will subsequently be deemed to have prevailed at the hearing held pursuant to Labor Code section 2673.1(d)(4), if the Labor Commissioner issues an order, decision or award in any amount in favor of the employee.

(b) For the purpose of Labor Code section 2673.1(f), if the employee rejects the assessment at the meet-and-confer conference, the employee will subsequently be deemed to have prevailed at the hearing held pursuant to Labor Code section 2673.1(d)(4), if the Labor Commissioner issues an order, decision or award in favor of the employee for a total amount (excluding attorney's fees and costs) greater than the amount deposited with the Labor Commissioner by the contractor or guarantor for payment to the employee of the amount assessed against the contractor or guarantor. To be considered for this purpose, the full amount of the assessment must be deposited with the Labor Commissioner at the meet-and-confer conference held pursuant to Labor Code Section 2673.1(f), for immediate and unconditional payment to the employee, regardless of the outcome of the hearing. Any such amounts deposited with the Labor Commissioner shall be transmitted to the employee forthwith, and a form shall be transmitted by a deputy labor commissioner to the hearing officer stating (without specifying the amount) that prior to the conclusion of the meet-and-confer conference, the contractor and/or guarantors unconditionally paid the full amount of the assessment to the employee. In the event that the full amount of the assessment is not so paid, attorney's fees shall be awarded to the claimant on the basis of any net recovery at the adjudicative hearing.

(c) Attorney's fees recoverable under Labor Code section 2673.1(f) shall be based on the reasonable hours expended on the case multiplied by a reasonable hourly rate for the legal work performed. A reasonable hourly rate is the prevailing hourly rate charged by private attorneys in the geographic area with similar

experience to that of the attorney(s) making the application for fees.

(d) Costs recoverable under Labor Code section 2673.1(f) shall mean the costs of preparing for and proceeding with the hearing, including but not limited to witness fees, mileage fees, and cost of service of process.

(e) At the hearing held pursuant to Labor Code section 2673.1(d)(4), the employee, or his or her attorney(s), shall submit evidence of reasonable attorneys' fees and costs sought to be recovered under Labor Code section 2673.1(f). Such evidence may be in the form of a declaration signed by the attorney(s) under penalty of perjury, setting forth an itemization of hours worked on the case, the basis of the hourly rate(s) claimed, and costs incurred. The other parties at the hearing shall have the right to present any contrary evidence, and to cross-examine the employee, or his or her attorney(s), on these matters.

(f) Reasonable attorneys' fees and costs, if any, shall be included in the order, decision or award of the Labor Commissioner as follows:

(1) Reasonable fees and costs are awarded against the contractor if the contractor refused to pay the assessment and the claimant prevails at the hearing, as provided in subsection (a) herein;

(2) Reasonable fees and costs are awarded against the contractor if the claimant rejects the assessment and prevails at the hearing, as provided in subsection (b) herein;

(3) Reasonable fees and costs are awarded against the guarantor(s) if the guarantor(s) refuse(s) to pay the assessment, and the claimant prevails at the hearing, as provided in subsection (a) herein;

(4) Reasonable fees and costs are awarded jointly and severally against the guarantor(s) for the contractor's share of the attorney's fees and costs if the guarantor(s) acted in bad faith, within the meaning of Labor Code section 2673.1(f).

NOTE: Authority cited: Section 2672, Labor Code. Reference: Sections 98, 2673.1, Labor Code.

### **§13658. Labor Commissioner's Enforcement of Wage Guarantee.**

(a) The Labor Commissioner may, during the course of an investigation pursuant to Labor Code Section 2673.1(j), serve a subpoena duces tecum on any contractor or manufacturer subject to the investigation in order to examine any books and records as may be necessary to determine the amount of wages or other compensation that may be owed to any employees and the identity of any potential guarantors for payment of the unpaid wages. The failure to comply with such a request for books and records, within 10 days of service of the notice, shall constitute grounds for revocation of registration or denial of an application for registration.

(b) The Labor Commissioner may perform a payroll audit based on the relevant documentation and information received during the course of the investigation. If the Labor Commissioner decides to proceed against any wage guarantors, he or she shall issue findings and an assessment of the amount of wages dues, which shall include a determination of each wage guarantor's proportionate share of liability. The Labor Commissioner shall schedule a meet and confer conference with the guarantors, contractors, and affected employees to attempt to resolve the matter, and shall provide written notice to each contractor, wage guarantor and affected employee, to the extent that the identities and whereabouts of such persons are known, of the assessment and the date, time, location and purpose of the meet and confer conference.

(c ) During the meet and confer conference, the Labor Commissioner's investigator shall present his or her findings and assessment of wages owed and each guarantor's proportionate share, and shall make a demand for payment of the amount of the assessment. In the event that the amounts found due are not paid within 10 days of the conclusion of the meet and confer conference, the Labor Commissioner shall set the matter for an investigative hearing. The contractor, wage guarantors and affected employees, to the extent that the identities and whereabouts of such persons are known, shall be provided with written notice of the date, time, location, and purpose of the investigative hearing.

(d) The hearing conducted under this section shall be investigative in nature, and the purpose of the hearing is to assist the Labor Commissioner in deciding whether to initiate a civil action pursuant to Labor Code section 2673.1(j). The provisions of Government Code sections 11400, *et seq.* are not applicable to this hearing. The Labor Commissioner may subpoena the attendance of witnesses and the production of records to the hearing as provided by Labor Code section 92. The hearing officer shall inquire fully into all matters at issue. The hearing may be electronically recorded, and testimony shall be given under oath or affirmation. In the hearing officer's discretion, the parties may be permitted to call, examine, and cross-examine witnesses, and to introduce documentary evidence. The hearing shall be informal, and shall not be conducted in accordance with technical and formal rules of evidence. Evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely upon in the conduct of serious affairs. The investigator's findings and assessment shall be admitted into evidence, provided the investigator is available to testify thereto. Within thirty days after the close of the hearing, the hearing officer shall issue a written recommended disposition of the case, stating the amounts, if any, that the hearing officer believes are owed by the contractor and wage guarantors. The hearing officer's recommended disposition shall have no res judicata or collateral estoppel effect, and shall be entitled to no weight in any subsequently filed civil action.

(e) If the matter is not resolved to the Labor Commissioner's satisfaction within 10 days of the issuance of the hearing officer's recommended disposition, the Labor Commissioner may thereupon file a civil action to enforce the wage guarantee, and for any other appropriate relief. Any guarantors whose identity or existence was unknown at the time of the investigative hearing may be sued in the civil action without the necessity of further administrative proceedings.

(f) The time limits set forth in Labor Code section 2673.1(d) shall not apply to any proceedings under this section.

(g) All notices under this section may be served by regular first class mail to the last known address of the affected employees, and to the last address of record for the contractor and wage guarantors, as set forth on the most recent application for registration as required under these regulations.

NOTE: Authority cited: Sections 2672, 2673.1(j), Labor Code. Reference: Sections 92, 98.3, 1193.6, 1194.5, 2673.1(e), 2673.1(j), Labor Code.

### **§13659. Information to be Contained in Contracts Between Manufacturers and Contractors, and on Itemized Wage Statements Provided to Employees.**

(a) Every applicant for registration shall certify, in writing and under oath, that the applicant will maintain for inspection and copying, and will make available upon request to the Labor Commissioner or any agent thereof, for a period of no less than four years from the date of execution, a written contract with each party with whom it contracts for the manufacture, sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories. Each such contract shall contain the following:

(1) The garment manufacturer's correct legal entity, any fictitious business names, and if a corporation or limited liability company, the name and address of the designated agent for service of process;

(2) The garment manufacturer's business address, telephone and facsimile numbers;

(3) The garment manufacturer's garment registration certificate number, and its date of expiration;

(4) The garment manufacturer's workers' compensation carrier, policy number, and its date of expiration;

(5) The contractor's correct legal entity, any fictitious business names, and if a corporation or limited liability company, the name and address of the designated agent for service of process;

(6) The contractor's business address, telephone and facsimile numbers;

(7) The contractor's garment registration certificate number, and its date of expiration;

(8) The contractor's workers' compensation carrier, policy number, and its date of expiration;

(9) The date the contract was entered into;

(10) The date the contracted garments or articles of wearing apparel are due for completion;

(11) The unit price, number of garments or articles of wearing apparel covered by the contract, and a description of the garment or apparel type, style, and color;

(12) The style numbers, cut or lot numbers;

(13) The total price of the contract; and,

(14) The date that payment is due from the manufacturer.

(15) Any changes from the original contract, including but not limited to changes in completion dates, unit price, number of units, and total price.

(b) Every contract between persons engaged in garment manufacturing for the manufacture, sewing, cutting, making, processing, repairing, finishing, assembling, or preparation of any garment or article of wearing apparel or accessories for sale or resale shall be in writing, shall be maintained for no less than four years from the date of its execution, shall be made available upon request to the Labor Commissioner or any agent thereof for inspection and copying, and shall contain the information set out in subsection (a)(1)-(15), above. The failure to maintain such written contracts, or to make them available to the Labor Commissioner for inspection and copying, shall constitute grounds for revocation of registration or denial of an application for registration.

(c) Every garment contractor shall include, in the written itemized wage earnings and deduction statements it is required, pursuant to Labor Code §226, to provide to its employees whenever wages are paid, the name(s) of any manufacturer(s) for whom the contractor performed any garment manufacturing operations at the location at which such employees were employed during the pay period covered by the itemized wage statements. If more than one manufacturer is listed on an employee's itemized statement, the contractor shall

list, next to each named manufacturer, the percentage of that employee's work time during the pay period that the employee performed garment manufacturing operations for the named manufacturer. The failure to include this information on employees' itemized wage statements shall constitute grounds for revocation of registration or denial of an application for registration.

NOTE: Authority cited: Sections 2672 and 2675, Labor Code. Reference: Sections 2673.1, 2675, Labor Code.